

Senate Bill No. 526

CHAPTER 37

An act to amend Sections 25299.37.1, 25299.39.1, 25299.77, and 25395.41 of the Health and Safety Code, relating to hazardous substances, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor May 9, 2002. Filed with
Secretary of State May 10, 2002.]

LEGISLATIVE COUNSEL'S DIGEST

SB 526, Sher. Underground storage tanks: discharges: closure: data storage: brownfield sites insurance.

(1) Under the existing Barry Keene Underground Storage Tank Cleanup Trust Fund Act of 1989, owners and operators of petroleum underground storage tanks are required to establish and maintain evidence of financial responsibility for taking corrective action and compensating third parties for bodily injury and property damage arising from operating an underground storage tank.

The act provides for the issuance of a specified closure letter relative to the completion of an investigation and corrective action for an underground storage tank. The act, prohibits the issuance of such a closure letter unless the soil or groundwater, or both, where applicable, have been tested for MTBE, as specified.

This bill would additionally prohibit the issuance of such a closure letter unless the board, a California regional water quality control board, or the local agency finds that the tank is in compliance with specified corrective action requirements.

(2) Under the act, the State Water Resources Control Board is required to develop and implement a data base system for storing and retrieving data from cases involving discharges of petroleum from underground storage tanks, including specified information on sites where discharges have occurred.

The act requires that a site included in the system be designated as having no residual contamination if, at the time the site is closed, the board determines that no residual contamination remains on the site.

This bill would instead require that a site be designated in the data system as having no residual contamination if, at the time a closure letter is issued for the site, the board makes that determination.

(3) The act requires the board to adopt regulations to implement the act and the board is authorized to adopt emergency regulations to

implement requirements for demonstrating financial responsibility and establishing corrective action requirements.

This bill would delete the department's specific authority to adopt emergency regulations to implement those provisions.

(4) The existing Financial Assurance and Insurance for Redevelopment Program (FAIR), requires the Secretary for Environmental Protection to solicit proposals for a package of environmental insurance products from insurance companies through a competitive bidding process. The insurance company selected by the secretary is required to offer a prenegotiated package of environmental insurance products to any interested recipient of a loan under the Cleanup Loans and Environmental Assistance to Neighborhoods (CLEAN) Program, which provides loans to finance the performance of actions necessary to respond to the release or threatened release of hazardous material on an eligible property, and to any other person who conducts a response action in the state. Existing law provides that the selected insurance company or companies are the exclusive state-designated provider of environmental insurance under the FAIR Program for a period of 3 years and requires the request for proposal to specify whether the secretary intends to select only one insurance company or more than one insurance company.

This bill would delete the requirement that the request for proposal specify whether the secretary intends to select only one insurance company or more than one insurance company.

The bill would declare that it would take effect immediately as an urgency statute.

The people of the State of California do enact as follows:

SECTION 1. Section 25299.37.1 of the Health and Safety Code is amended to read:

25299.37.1. (a) No closure letter shall be issued pursuant to this chapter unless all of the following conditions are met:

(1) The soil or groundwater, or both, where applicable, at the site have been tested for MTBE.

(2) The results of that testing are known to the regional board.

(3) The board, the regional board, or the local agency makes the finding specified in subdivision (h) of Section 25299.37.

(b) Paragraphs (1) and (2) of subdivision (a) does not apply to a closure letter for a tank case for which the board, a regional board, or local agency determines that the tank has only contained diesel or jet fuel.



SEC. 2. Section 25299.39.1 of the Health and Safety Code is amended to read:

25299.39.1. (a) The board shall develop, implement, and maintain a system for storing and retrieving data from cases involving discharges of petroleum from underground storage tanks to allow regulatory agencies and the general public to use historic data in making decisions regarding permitting, land use, and other matters. The system shall be accessible to government agencies and the general public. A site included in the data system shall be clearly designated as having no residual contamination if, at the time a closure letter is issued for the site pursuant to Section 25399.37 or at any time after that closure letter is issued, the board determines that no residual contamination remains on the site.

(b) For purposes of this section, “residual contamination” means the petroleum that remains on a site after a corrective action has been carried out and the cleanup levels established by the corrective action plan for the site, pursuant to subdivision (g) of Section 2725 of Title 23 of the California Code of Regulations, have been achieved.

SEC. 3. Section 25299.77 of the Health and Safety Code is amended to read:

25299.77. (a) The board shall adopt regulations to implement this chapter. In adopting these regulations, the board shall ensure that the regulations are consistent with this chapter, Chapter 6.7 (commencing with Section 25280), and the requirements for state programs implementing the federal act.

(b) The adoption of any regulations pursuant to this section that are filed with the Office of Administrative Law on or before January 1, 1995, shall be deemed to be an emergency necessary for the immediate preservation of the public peace, health, safety, and general welfare. Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, any emergency regulation adopted by the board pursuant to this subdivision shall not be repealed by the Office of Administrative Law, and shall remain in effect until revised by the board.

SEC. 4. Section 25395.41 of the Health and Safety Code is amended to read:

25395.41. (a) The secretary shall solicit proposals for a package of environmental insurance products from insurance companies through a competitive bidding process. The request for proposal prepared by the secretary shall identify the objectives of this article and the specific types and coverage limits of the insurance products desired, including endorsements and exclusions. The request for proposal shall require that the proposal allow a purchaser the opportunity to pay for additional



coverage without losing the lower transaction costs structure of the prenegotiated policy. The secretary shall hold at least one public workshop in both the northern and the southern part of the state to present and solicit comments on the request for proposal prior to receiving any proposals.

(b) (1) The secretary shall evaluate the extent to which each proposal submitted pursuant to subdivision (a) meets the objectives of the request for proposal and shall also evaluate each proposal and interested party using all of the following factors:

- (A) Product pricing.
- (B) Claims history.
- (C) Underwriting history.
- (D) Company financial strength and size.
- (E) Scope of policy coverages, including endorsements and exclusions.
- (F) Marketing and distribution of the insurance products.

(G) Any other factor that the secretary determines will affect the ability of the selected insurance company to meet the requirements of this article and provide the environmental insurance products in the most effective and efficient manner and at the least cost to the state and to persons seeking that insurance.

(2) The secretary shall select one or more insurance companies that have submitted a proposal pursuant to subdivision (a) to be the exclusive state-designated provider of environmental insurance under this article for a period of three years from the date of selection. The secretary shall select a company that, in his or her determination, has submitted a proposal that best meets the requirements of this article and the objectives stated in the request for proposal at the best possible price. Every three years, the secretary shall repeat the competitive bidding process specified in this section.

(c) An insurance company selected to provide prenegotiated environmental insurance products pursuant to subdivision (b) shall offer this prenegotiated package of insurance products to any interested recipient of a loan under the CLEAN Program. The insurance company shall also offer the environmental insurance products made available under this article to any other person who conducts a response action in the state.

(d) The secretary shall implement this section in consultation with representatives of other appropriate state agencies, including the Technology, Trade, and Commerce Agency, the Business, Transportation and Housing Agency, the Office of Planning and Research, the Pollution Control Financing Authority, the Department of Insurance, the state board, the department, and with other interested



parties, including developers, lenders, insurers, and representatives from environmental organizations. The secretary shall implement this section in a manner that is consistent with the requirements for state procurement of services set forth in Article 4 (commencing with Section 10335) of Chapter 2 of Part 2 of Division 2 of the Public Contract Code.

SEC. 5. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to clarify provisions of the California Financial Assurance and Insurance for Redevelopment Program, which is intended to make environmental insurance more affordable by negotiating standardized policies and subsidizing premiums for the cleanup of brownfield sites, and to insure that a closure letter is not issued for a site contaminated with MTBE unless corrective action is taken properly at the site, thereby protecting public health and safety and the environment, it is necessary that this act take effect immediately.

